

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALREE B. SWEAT III,

Plaintiff,

v.

No. 15-cv-0226 RB/SMV

**CITY OF LAS CRUCES,
JAIME MONTOYA, MIRANDA BAKER,
PAUL LUJAN, and FNU SANCHEZ,**

Defendants.

ORDER GRANTING SECOND MOTION TO STRIKE SURREPLY

THIS MATTER is before the Court on Defendants' Motion to Strike Surreply . . . [Doc. 73], filed on June 21, 2016. Plaintiff did not respond, and the time for doing so has passed. The Motion is well-taken and will be granted.

Defendants filed their Second Motion [for] Summary Judgment Based on Qualified Immunity [Doc. 68] ("Second MSJ") on May 18, 2016. Briefing was complete on June 10, 2016. *See* [Docs. 68, 69, 70]. Plaintiff filed a surreply without leave of Court on June 20, 2016. [Doc. 72]. Defendants move to strike it under the local rules. [Doc. 73].

Plaintiff did not respond to the Motion to Strike, which constitutes consent to the grant the Motion. *See* D.N.M.LR-Civ. 7.1(b). Moreover, Plaintiff was aware that his surreply was improper without leave of Court because a previous surreply (also filed without leave) was struck on March 11, 2016. [Doc. 56]. Lastly, and most importantly, though, Defendants' reply [Doc. 70] to the Second MSJ offered no new evidence and no new arguments to which Plaintiff

was entitled further submission. *See* D.N.M.LR-Civ. 7.4(b); *N.M. Consol. Constr. v. City Council*, 97 F. Supp. 3d 1287, 1294, n.6 (D.N.M. 2015).

IT IS THEREFORE ORDERED that Defendants' Motion to Strike Surreply . . . [Doc. 73] is **GRANTED**. Plaintiffs' Surreply [Doc. 72] is **STRUCK**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge